IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-30-6-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice AR. RAMALINGAM

Writ Petition No. 11258 of 2001

Union of India represented by
1. The General Manager,
   Integral Coach Factory,
   Chennai-38.

2. The Deputy Chief Personnel Officer (G),
   Office of the Chief Personnel Officer,
   Integral Coach Factory,
   Chennai-38.

.. Petitioners.

Vs.

1. Central Administrative Tribunal,
   Chennai Bench,
   represented by its Registrar,
   Chennai-104.

2. Z. Ajeesudeen.

.. Respondents.

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records of the first respondent relating to its order dated 10-07-2000, passed in O.A.No. 105/1999 and quash the same as illegal and without jurisdiction.

For petitioners :- Mr. V. Radhakrishnan

For 2nd Respondent:- Mr. G. Jeremiah

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ORDER

(Order of Court was made by *P. Sathasivam, J.*,)

The General Manager and the Deputy Chief Personnel Officer (G), Integral Coach Factory, aggrieved by the order of the Central Administrative Tribunal, Chennai Bench dated 10-07-2000, passed in O.A.No. 105/99 directing the administration to regularise the services of the applicant therein/2nd respondent herein from the date of adhoc promotion, have filed the above Writ Petition.

2. The case of the petitioner is briefly stated hereunder:

The second respondent herein was appointed as Inspector of Works-Grade III on 14-08-1979 through Railway Recruitment Board and later on, he was promoted as Inspector of Works, Grade II on 01-01-1984. Subsequently on 3-5-85, he was again promoted as Inspector of Works, Grade-I. Later on, he was promoted as Chief Inspector of Works with effect forom 14-9-1992. During September, 1993, there arose a vacancy of Assistant Engineer (Group-B) in the Civil Engineering Department. Originally the cadre of Civil Engineering department in ICF was a combined one with that of Southern Railway. The Railway Board in their letter dated 9-1-92 cancelled their earlier orders and demerged the cadre of Civil Engineering Department of ICF from that of the Southern Railway. Two Engineers, who felt that they lost promotional opportunities because of this order of Railway Board demerging the Civil Engineering cadre of ICF from that of the Southern Railway, approached the Administrative Tribunal for necessary direction. Therefore, the General Manager, ICF approached the Railway Board again to merge the Civil Engineering cadre with Southern Railway at least at Group-B level. Expecting a favourable reply from the Raiwlay Board, when the Group-B vacancy arose in September, 1993, it was temporarily decided to resort to adhoc promotion pending receipt of Board's final decision.

3. The 2nd respondent was found suitable for adhoc promotion to Group-B post of Assistant Engineer based on the criteria for promotion on adhoc basis. Therefore, he was promoted on adhoc basis to the post of Assistant Engineer with effect from 1-10-93 against the regular vacancy. In the order of appointment, it was clearly stated that the above order of adhoc promotion would not confer on him any right for continuance in the above post or for automatic empanelment against the future vacancies in the post of Assistant Engineer. Accepting the same, the second respondent joined in the promoted post.

4. Since the Administration did not receive any reply

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from the Railway Board on the issue of merging the Civil Engineering cadre of ICF with Southern Railway, action was initiated to access vacancies for conducting regular selection. A notification to empanel one candidate was issued on 13-12-94 duly fixing the last date of receipt for the application as 24-12-94. The first petitioner-General Manager took a decision to conduct the pre-promotional class for all sections and the Chief Engineer also finally agreed to conduct pre-promotional class and after the same was conducted in June, 1995 the written test was fixed on 6-8-95. However, the written test was cancelled by the Chief Engineer, requesting for fresh selection for two vacancies. Accordingly, vacancies were reassessed duly taking into account the newly created work charged post. Hence, a fresh notification for two vacancies was issued on 25-01-1996. Fresh pre-promotional classes were conducted and thereafter written test was held on 23-02-1996 the results of which were declared on 28-02-1996. The second respondent herein was one of the candidates who had appeared for the selection and qualified in the written examination. The viva-voce scheduled for 02-03-1996 was postponed to 14-03-1996 by the selection committee as the second respondent herein was placed on sick list. On the date of viva-voce, viz.,14-03-1996, the CBI officials conducted a surprise check and seized all the files relating to the selection. In May, 1996, the CBI recommended scrapping of the selection and ordering a fresh selection as they noticed irregularities in valuation. Accordingly, a fresh notification was issued on 25-9-96. Again, pre-promotional classes were conducted and after written test and viva-voce, ultimately a panel was released on 21-6-97. The second respondent was one of the candidates who was placed in the panel. Thus, the second respondent, who was promoted on adhoc basis with effect from 1-10-93 was regularly promoted to the post of Assistant Engineer, only with effect from 21-6-97.

5. While so, the second respondent submitted a representation to the second petitioner herein on 17-7-97 requesting to regularise him in the post of Assistant Engineer with effect from 1-10-93, the date of his adhoc promotion. The second petitioner by order dated 11-8-97, informed the second respondent that his request for regularisation of his promotion to Group-B from the date of his adhoc promotion is not feasible for compliance. Against this order, the second respondent made an appeal to the first petitioner on 10-11-1997, challenging the orders of the petitioners, the second respondent filed O.A.No. 105/99. The petitioners herein filed a reply statement resisting the claim of the second respondent herein and contended that the period of adhoc service cannot be taken into account and the second respondent's prayer for regular promotion to Group-B service with effect from the date of adhoc promotion i.e., from 1-10-93 cannot be accepted. However, the first respondent-Tribunal by order dated 10-7-2000, allowed the Original Application

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and directed the petitioners herein to regularise the services of the second respondent herein in Group-B post i.e., the post of Assistant Engineer from the date of adhoc promotion, i.e., from 01-10-93. Aggrieved by this order, the petitioners preferred the above Writ Petition.

6. Heard Mr. V. Radhakrishnan, learned counsel for the petitioners-Railway Administration and Mr. G. Jeremiah, learned counsel for the second respondent.

7. The only point for consideration is, whether the adhoc promotion granted with effect from 1-10-93 is to be counted from the said date in Group-B post, as claimed by the applicant-second respondent and accepted by the Tribunal or the period of adhoc service cannot be taken into account as claimed by the I.C.F administration.

8. It is relevant to refer office order No.PB.CG/192/1997 Gazetted cadre-Civil Engineering Department dated 30-9-93 wherein, while the second respondent herein was promoted on adhoc basis, it was specifically stated that the said adhoc promotion does not confer on him any right for continuance in the above post or for automatic empanelment against future vacancies of AEN. The said order which finds a place at page 8 of the typed-set of papers, also makes it clear that in the vacancy caused due to retirement of one V. Lakshmipathy from 30-9-93, without conducting test or assessment, no doubt found suitable, he was promoted on adhoc basis posted as AEN/M with effect from 1-10-1993. When the empanelment was prepared selection was made only on 21-6-97, he made a representation with a request to take his services from the date of his adhoc promotion, namely, 1-10-1993, the authorities after noting that there is no Railway Board Rule to accept his claim and considering the fact that the seniority could be reckoned only from the date of regular promotion and all fortuitous service rendered prior to empanelment shall not be taken into account for the purpose of seniority, rejected his request. In this regard, Mr. V. Radhakrishnan, learned counsel appearing for the Integral Coach Factory very much relied on a judgement of the Supreme Court in STATE OF W.B. v. AGHORE NATH DEY, reported in (1993) 3 Supreme Court Cases 371 wherein Their Lordships have held that where initial appointment is only adhoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. In other words, according to the Hon'ble Supreme Court, the category of cases where initial appointment is only ad hoc and not according to rules, being made only as a stop gap arrangement, the same has to be excluded. According to Mr. V. Radhakrishnan, the case of the second respondent squarely falls within the said corollary.

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9. The other decision relied on by him is in the case of AJIT KUMAR RATH v. STATE OF ORISSA, reported in AIR 2000 Supreme Court 85. The following statement in para 25 is pressed into service:

> "25. It is thus clear that the appellant was promoted on a regular, though provisional, basis pending concurrence from the Orissa Public service Commission. The promotion having been made in accordance with the Rules, the entire period of ad hoc service beginning from 1972 to 1976, when the appellant was appointed on a regular basis on the concurrence of the Commission, would have to be counted towards the seniority of the appellant,vis-a-vis the contesting respondents. The Tribunal, in these circumstances, had rightly invoked the principles laid down by this Court in Direct Recruit Class-II Engg. Officers Association's case (AIR 1990 SC 1607 : 1990 Lab IC 1304). There was no scope to deviate from this Rule as it has been clearly laid down by this Court in principles (A) and (B) set out therein as under:
>
> "(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
>
> (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

10. In SWAPAN KUMBAR PAL v. SAMITTABHAR CHAKRABORTY, reported in (2001) 5 Supreme Court Cases 581, the following conclusion is relevant: (para 9)

> "9. So far as the third question is concerned, it is no doubt true that the respondents, who got their ad hoc promotion between the period 9-12-1982 to 17-1-1984, were later on found suitable in the test that was held and the result of the said test was published on 28-2-1985. It is also true that they had been continuing from their respective dates of ad hoc

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promotion till they were regularised, after being selected through due process. But that by itself cannot confer a right on them to claim the ad hoc period of service to be tagged on for the purpose of their seniority inasmuch as there is no provision which says that an employee on being regularly promoted, such regular promotion would date back to the date of original promotion in the cadre, which might have been on ad hoc basis. When the service conditions are governed by a set of rules, in the absence of any rules, it is difficult to hold that regular promotion would date back to the date of ad hoc promotion itself. We, therefore, answer the question in the negative.

11. With reference to the above decisions, Mr. Jeremiah would contend that inasmuch as the second respondent was promoted though on adhoc basis continuing from 1-10-93 and ultimately empanelled in 1997, ought to have considered the adhoc service i.e., from 1-10-93 for all purposes. He relied on the very same judgement, namely, AIR 2000 SC 85 emphasised by the learned counsel for the petitioners. He also relied on another decision in NARENDER CHADHA V. UNION OF INDIA, reported in AIR 1986 SC 638 wherein it was held that when an officer has worked for a long period for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. Even according to Mr. Jeremiah, it is not the case of the officer whose continuous officiation is more than 4 years as stated in that case. Hence the said decision is not helpful to his claim.

12. He relied on a Constitution Bench decision of the Supreme Court in DIRECT RECRUIT CLASS II ENGG. OFFICERS' ASSOCIATION v. STATE OF MAHARASHTRA, reported in AIR 1990 Supreme Court 1607 wherein Their Lordships had held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. They further held that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. The said dictum is not helpful to the case of the second respondent. It is not his case that the adhoc promotion was made by following the procedure laid down by the Rules and he was promoted on adhoc basis on the vacancy caused due to the retirement of one V.

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Lakshmipathy. Admittedly, he did not undergo any test or scrutiny as per the rules.

13. Finally learned counsel for 2nd respondent has also relied on another judgement of the Supreme Court in RUDRA KUMAR SAIN v. UNION OF INDIA, reported in (2000) 8 Supreme Court Cases 25. Their Lordships after referring to the meaning of the expressions "ad hoc", "fortuitous", and "stopgap" from various well known Dictionaries, concluded that, (para 19)

> "19.....If the appointment order itself indicates that the posts created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre."

14. In the light of the principles laid down above and in view of the specific condition mentioned in the appointment order itself, namely, that the ad hoc promotion does not confer on him any right for continuance in the above post or for automatic empanelment against future vacancies of AEN, though later on found suitable in the tests that was held and the empanelment was prior in 1997 and in the absence of specific rules considering the adhoc services in the Railway Board Rules, we accept the stand taken by the Indian Coach Factory Administration and unable to concur with the conclusion arrived by the Tribunal. Further, the Tribunal granted relief in favour of the applicant/2nd respondent herein only on the basis that

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the administrative delay in preparing empanelment has not been properly explained and for the procedural delay the applicant cannot be deprived of the benefit, accordingly ordered regularisation from the date of promotion. With regard to delay even before the Tribunal, the I.C.F administration has explained that first of all there were no Railway Board rules to regularise a Group "B" officer promoted on ad hoc basis; secondly the delay was due to various administrative reasons including intervention of C.B.I. It is explained in the reply statement that the regular selection was made on 28-2-96. In view of the above, the panel was released only on 21-6-97. We have also perused the details furnished in the reply statement filed before the Tribunal as well as in the affidavit filed in this Court and we are satisfied that the administration cannot be blamed for the delay. We are also satisfied that in the absence of Railway Board Rules to regularise Group-B Officer promoted on ad hoc basis from the date of ad hoc promotion, no positive direction could be issued to the authority to accept the case of the applicant. We are satisfied that regularisation can be effected only from the date of promotion on the basis of positive act of selection and this was properly explained by the ICF administration. Taking note of the stand taken in the office order that the ad hoc promotion does not confer on him any right for continuance in any post or for automatic empanelment against future vacancies as AEN, that there was no Railway Board rule to regularise a promotion from the date of ad hoc promotion and that the delay was not due to inaction on the part of the administration, we are satisfied that the Tribunal committed an error in setting aside the order of the Deputy Chief Personnel Officer, ICF., Chennai-38 in PB/GG/6/Seniority dated 16-11-98. We are also satisfied that it is settled legal position that the recruitment to the service should be governed by the appropriate statutory rules. In the service Regulations, selection to Group-B service by promotion is by a regularly constituted Departmental Promotion Committee (DPC). The process of selection consists of written test and viva-voce. However, the ad hoc promotion is only a temporary appointment dehors the rules pending regular selection without conferring any right to regularisation of service. Therefore, the direction given by the Tribunal to take into account the adhoc service of the second respondent for regularising the services in Group-B in the post of Assistant Engineer is illegal and contrary to the principles laid down by the Apex Court. Accordingly, the impugned order of the Tribunal is liable to be set aside.

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15. In the light of what is stated above, the order of the Central Administrative Tribunal dated 10-7-2000 passed in O.A.No. 105 of 1999 is quashed and the Writ Petition is allowed. No costs.

Sd/

Asst.Registrar

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Sub Asst.Registrar

To:-
1.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai-104.

2.The General Manager,
Integral Coach Factory,
Chennai-38

3.The Deputy Chief Personnel Officer(G),
Office of the Chief Personnel Officer,
Integral Coach Factory,
Chennai-38

+1cc to Mr.V.Radhakrishnan,Advocate SR.No.26899

+1cc to Mr.G.Jeremiah,Advocate SR.No.26993

NG(CO)
kaa 05.07.

Order in
W.P.No. 11258 of 2001
Dt:-30-6-2005

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